

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ANA R. OLIVELLA RIVERA

Plaintiff

v.

POPULAR LEASING AND RENTAL, INC.,
ET AL.

Defendants

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* CIVIL NO.: 98-2267 (JAG)

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JURY TRIAL DEMANDED

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MOTION REQUESTING APPROVAL OF PRE-TRIAL ORDER

TO THE HONORABLE COURT:

COME NOW defendants PREFERRED RISK INSURANCE COMPANY (erroneously denominated Puerto Rican American Insurance Company) and BANCO POPULAR DE PUERTO RICO, represented by the undersigned attorneys, and before the Honorable Court respectfully tenders this proposed pre-trial order:

1. On May 31, 2006, plaintiffs filed an amended pre-trial conference order (docket number 172) which was granted by this Honorable Court through an order issued on May 31, 2006 (docket number 174).

2. The amended pre-trial conference filed by plaintiffs contains all the parties' allegations and the appearing law firm of Otero & López is included as having electronically signed said order. However, said pre-trial conference order filed by plaintiffs was never notified by plaintiffs to the appearing party prior to its filing nor was the intention to file said pre-trial

order.

3. Said pre-trial order is an old draft that was prepared a long time ago on the case, as evidenced by the fact that it appears signed by attorney Alexis Mattei Barrios from Otero & López, who was the attorney in charge of the case prior to the undersigned attorney but who does not work at our offices any longer.

4. After the pre-trial order filed on May 31, 2006 (docket number 172) was prepared, another joint pre-trial order was prepared by the parties which is dated November 23, 2005 and filed on November 28, 2005 (docket number 135). This more recent pre-trial order contains the allegations, statement of facts, theory and proposed witnesses as were approved and submitted by all the parties. The amended pre-trial order filed by plaintiffs on May 31, 2006 (docket number 172) is different from the order jointly filed (docket number 135) and, consequently, does not reflect accurately the appearing party's proposed pre-trial order.

5. The order entered by this Honorable Court on May 31, 2006 (docket number 174) granting plaintiff's motion to amend pre-trial conference (docket number 172) specifically states that it is referring to document docket number 135 which is the joint pre-trial order filed by the parties on November 28, 2005. Therefore, it is our understanding that the proposed pre-trial order approved by this Honorable Court and which should rule the proceedings is docket number 135 and not the document titled Amended Pre-trial

Conference Order filed unanimously by plaintiffs on May 31, 2006 (docket number 172).

6. As stated previously, the amended pre-trial conference filed by plaintiffs on May 31, 2006 (docket number 172) is completely different from the previously filed pre-trial order (docket number 135). In the first place, the appearing party's factual and legal contentions contained in sub-section V of docket number 172 is different from the one that was included in the jointly filed order (docket number 135). Regarding sub-section VI Uncontested Facts, several stipulations were reached by the parties which were not included in the amended pre-trial (docket number 172) and it includes several proposed uncontested facts as proposed by the appearing party which are not those proposed in docket number 135.

Regarding sub-section VIII Witnesses, the plaintiffs included new witnesses that they have never announced previously during the proceedings, that is, a representative of Preferred Risk, a representative of Triple S, Trans Union officers, attorney Dominguez Wolf, credit officers for R&G Mortgage, General Motors Acceptance Corp., Sprint, and Citibank, and attorney for Triple S. All these witnesses were never announced by plaintiffs before filing said amended pre-trial order on May 31, 2006. On the other hand, docket number 172 includes Noemi Molina, Orlando Alvarado, Evelyn Santana and Yamil Maldonado as the witnesses for the

appearing party when the only witness announced by the appearing party is Millie Rivera from Popular Leasing as stated on the previously filed pre-trial order (docket number 135).

Regarding section IX Documentary Evidence, plaintiffs announced new evidence that has never been announced before and, in fact, has not been produced to the appearing party. Specifically, said evidence is contained in sub-section (i) which are credit bureau reports dated 1999, 2000, 2001, 2002 and 2003 whereas only Credit Bureau reports for 1998 and 1997 have been announced. On sub-section (q) plaintiffs announced also for the first time credit denial reports dated January 2004, April 2004 and March 2002 whereas previously plaintiffs have only announced on sub-section (q) credit denial reports dated August 18, August 10 and July 17, 1998 and September 20, 1996. Also, plaintiffs included as new exhibits sub-sections (t) to (z) and (aa) which are documents that were not included in the previously filed joint pre-trial order and have not been produced to the appearing party. Plaintiff included in docket number 172 six (6) documents which are not the evidence that will be submitted by the appearing party, as it was announced in the previously filed document docket number 135.

In sum, the information contained in the amended pre-trial conference order filed unanimously by plaintiffs on May 31, 2006 (docket number 172) does not reflect the theories, allegations, documents, witnesses and evidence as approved and proposed by the

appearing party.

WHEREFORE, it is respectfully requested that this Honorable Court enters an order approving the joint pre-trial order filed by the parties on November 28, 2005 (docket number 135) and clarifying that the pre-trial order that will rule these proceedings is docket number 135 and not the amended pre-trial order filed unanimously by plaintiffs as docket number 172.

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **Rafael A. Oliveras López, Esq.**, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: **David López Pumarejo, Esq.**, P.O. Box 195351, San Juan, Puerto Rico 00919-5351.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 5th day, of June, 2006.

s/ Ana María Otero
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and Banco Popular de Puerto Rico
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